

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Administration of the	)	CC Docket No. 92-237
North American Numbering Plan	)	Phases One and Two

REPLY COMMENTS OF  
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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June 30, 1994

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No. of Copies rec'd 0+9  
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## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY . . . . .	i
I. THE COMMISSION MUST MOVE QUICKLY TO ESTABLISH A STANDARD NATIONALLY UNIFORM DIALING PATTERN PRESERVING THE DIGIT "1" AS THE TOLL INDICATOR . . . . .	1
II. THE COMMISSION SHOULD PREEMPT INCONSISTENT STATE DIALING PLANS . . .	8
III. CONCLUSION . . . . .	13

### **SUMMARY**

The Ad Hoc Committee's Reply Comments are limited to responding to comments on the issue of whether the Commission should prescribe a uniform national dialing plan. The specific issue which has brought this matter to a head is the intention of the LECs to implement Bellcore's INPA code plan, including, in some instances, elimination of the prefix "1" as a toll call identifier.

Users and carriers have explained persuasively in comments that elimination of the use of "1" as a toll call identifier will cause consumer confusion, substantial capital costs and ongoing management problems for PBX owners, and a reduction in competition in the home NPA toll service market. These are serious problems which warrant prompt Commission attention, rather than tacit acquiescence in LEC plans.

At a minimum, the Commission should prescribe use of the Ad Hoc Committee's recommended dialing plan recommended in connection with interstate toll calls and interLATA, interstate local calls. The Commission's jurisdiction to do so is beyond question.

Additionally, the Commission should preempt state authorities from requiring use of a different dialing plan. The Commission has plenary jurisdiction over the administration of the North American Numbering Plan. The Commission previously has exercised this jurisdiction to bar states from implementing different policies with respect to NXX code assignments for

cellular carriers because inconsistent state policies would disrupt the uniformity of the NANP. Inconsistent dialing plans would be at least as disruptive to the uniformity of the NANP.

Moreover, inconsistent dialing plans would cause, as shown in the comments, great consumer confusion. Carrier practices or state policies which cause such confusion would frustrate Commission policies to minimize consumer confusion with respect to purchasing interstate telecommunications services and should be preempted. Preemption of such policies and practices would be within the limits of the Commission preemptive authority as defined by case law.

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**REPLY COMMENTS OF  
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee" or "Committee") submits these reply comments in response to the comments filed in the above-captioned proceeding.<sup>1/</sup>

**I. THE COMMISSION MUST MOVE QUICKLY TO ESTABLISH A STANDARD  
NATIONALLY UNIFORM DIALING PATTERN PRESERVING THE DIGIT "1"  
AS THE TOLL INDICATOR**

The comments directed to the uniform toll dialing pattern issue have provided the "additional information on the specific problems presented by non-uniform dialing arrangements, [and] the problems these arrangements have created or will create in the future", sought by the Commission in the NPRM.<sup>2/</sup> The comments substantiate and amplify the concerns expressed by the Ad Hoc Committee and others in the initial stages of this proceeding<sup>3/</sup> that Bellcore's proposal for the use of seven-digit

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<sup>1/</sup> Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, CC Docket No. 92-237, FCC 94-79 (rel. April 4, 1994) (hereafter the "NPRM").

<sup>2/</sup> Id. at para. 44.

<sup>3/</sup> See, Ad Hoc Committee Initial Comments filed December 28, 1992, at 18-28; Ex Parte Letter, dated May 6, 1993, filed (continued...)

dialing for all home NPA calls, both local and toll, and the use of the 1-plus-10-digit format for all calls to another NPA (to distinguish interchangeable NPAs from identical in-area CO codes), again regardless of whether the call is local or toll rated,<sup>4/</sup> will: (1) cause substantial customer confusion and unintended incidence of toll charges; (2) adversely impact competition in the interstate long distance market; and, (3) cause PBX users to incur significant costs to adapt to the new dialing patterns, and difficulty in protecting against unauthorized and fraudulent long distance calling.

The long established association in the public mind between 1 + ten digit dialing and toll charges requires no documentation. Rather, it is well known and should be acknowledged.<sup>5/</sup> Indeed, the fact that departure from this

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<sup>3/</sup> (...continued)

jointly on behalf of the Ad Hoc Committee, California Bankers Clearing House Association, MasterCard International Incorporated, New York Clearing House Association, Securities Industry Association, Consumer Federation of America, County of Los Angeles, Information Technology Association of America, International Communications Association, New York Consumer Protection Board, and Tele-Communications Association.

<sup>4/</sup> Employing the digit "1" to signify a ten-digit number has been proposed by Bellcore, the present NANP administrator, as part of the implementation of interchangeable NPAs. Under this proposal, scheduled to be effective January 1, 1995 along with the implementation of interchangeable NPAs, LECs would have the option of eliminating the use of the digit "1" as a toll indicator for home NPA toll calls, absent contrary regulatory policy.

<sup>5/</sup> As MCI notes: "For almost forty years, telephone users have been instructed to dial '1' before toll calls. Thus, the digit 1 has become a toll indicator for nearly all telephone  
(continued...)"

standard would be likely to cause substantial caller confusion is not directly challenged in the comments filed by those parties (principally, certain LECs) expressing reservations with respect to nationwide designation of the digit "1" as the toll indicator. Similarly, because callers dialing either a 7-digit home NPA number or a 10-digit foreign NPA number would no longer be alerted by the digit "1" that a particular call entails toll charges, it seems apparent that at least some of these callers will inadvertently forego choosing an alternative provider because they will be unaware they are placing a long distance call, thereby potentially reducing competition in the long distance market.<sup>5/</sup>

The problems for PBX users if the digit "1" is eliminated as a toll indicator are addressed in the record. For example, the American Petroleum Institute ("API") points out that the software changes required to accomplish toll restriction in a non-uniform dialing pattern environment are inherently complicated because of the multiple number recognition sequences

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<sup>5/</sup> (...continued)

users. The 1 prefix is intended to inform the calling party that, when the digit 1 is dialed before the called number, additional billing charges will accompany the call, except when the call is toll free such as a 1+800 call for which the caller does not pay a toll charge." MCI Comments filed June 7, 1994, Attachment B, p. 2.

<sup>6/</sup> In the case of interstate, intraLATA toll traffic, given that "such calls are sometimes carried by a LEC at tariffed rates substantially higher than would have been charged" by an interLATA IXC (NPRM, para. 56), it seems probable that most callers will inadvertently forego choosing an alternative provider.

required which, as new area codes are introduced, necessitate ongoing modification to restrict toll calls to the additional NPAs, engendering not only direct costs for modified software, but significant "hidden costs" for paying third-party PBX maintenance organizations or overhead costs for company staff to make PBX software changes. Moreover, because many existing PBX systems do not have adequate memory to store a growing number of area codes, a standard toll call identifier serves to preserve the utility of in-place PBXs, whereas adoption of non-uniform dialing arrangements will serve to promote needless product obsolescence.<sup>2/</sup>

In addition to highlighting the PBX toll fraud issue, Sprint notes that uniform use of the digit "1" as a toll indicator should help preserve the efficiency of the LEC network for all users whereas, after implementation of interchangeable NPAs under the Bellcore proposal, LEC switches will be unable to distinguish quickly between toll and local calls, resulting in an inefficient use of switch capacity and increasing the time needed to process a call. This is because, if the 1+ toll indicator is not used, LEC switches would have to be programmed to wait a

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<sup>2/</sup> API Comments filed June 7, 1994, p 4. The Ad Hoc Committee also shares API's concern (API Comments, p 4. n. 4) with the Commission Staff's cavalier treatment of this issue, and apparent lack of appreciation for technological limitations, costs and effects on users, evidenced in its recently issued "Fact Sheet", advising simply that "PBXs or other switches that have been programmed to block toll calls based on the use of "1" as a toll indicator will need to be altered." News Release, mimeo no. 43219, rel. May 26, 1994, Industry Analysis Division Fact Sheet, p. 2.



certain number of seconds to determine whether the caller intends to dial more than 7 digits. Moreover, if a caller placing a 10-digit toll call does not enter the last three digits quickly enough, his or her call could be misrouted.<sup>8/</sup>

LEC objections to prescription by this Commission of a uniform nationwide toll indicator generally do not dispute the adverse impacts of the Bellcore INPA plan which have been raised by the Ad Hoc Committee and others. Primarily, they argue that dialing patterns have traditionally been handled at the state level and should continue to be handled locally. For example, Bell Atlantic argues that "historically" states have controlled dialing patterns and that this arrangement has worked well.<sup>9/</sup> This "inertia" argument is not persuasive. Assignment of CO codes too has traditionally been done locally. Yet, the Commission proposes correctly to centralize administration of CO code assignments and has asserted plenary jurisdiction over CO codes.<sup>10/</sup>

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<sup>8/</sup> Sprint Comments filed June 7, 1994, at 12. Similarly, network use efficiency is not served where "the lack of a uniform nationwide dialing pattern . . . requires that callers learn new dialing arrangements when they travel or move" (Sprint Comments, at 11). "A standard toll call identifier makes particular sense for such a mobile society as the United States. Divergent regional or local tolls can only undermine, or at least make more difficult, use of the network." (API Comments, at 3).

<sup>9/</sup> Bell Atlantic Comments, at 6.

<sup>10/</sup> The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2912 (para. 19) (1987), recon. 4 FCC Rcd 2369, 2369-70 (para. 7) (1989). Even LECs admit that centralization of CO code assignments would be beneficial (e.g., BellSouth Comments, at 9; Ameritech Comments, at. 4-5), although some  
(continued...)

Some LECs assert that the benefits of uniformity are outweighed by the "cost and confusion of changing existing plans in each NPA to some national plan."<sup>11/</sup> The reality, however, is precisely the opposite. Most states already prohibit 7-digit dialing of toll calls.<sup>12/</sup> The Bellcore proposal would change the long established and more widely followed norm of 1+ toll dialing, causing far greater cost and confusion for callers generally than would result from bringing the relatively few non-conforming states into line on this issue. This approach, in opposition to a uniform toll dialing pattern, reveals the LECs' (and their surrogate, Bellcore's) true perspective. Rather than considering how the public would be affected, they look only to their own parochial interests and preferred mode of operation; which, not incidentally, will serve their interests by increasing toll revenues and adversely affecting long distance competition. Even NARUC, traditionally a guardian of the states'

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<sup>10/</sup> (...continued)

propose that the issue be deferred or studied further. See, Comments of US WEST, at 9-11; USTA, at 7; NYNEX, at 9-11; SWB, at 10; Bell Atlantic, at 3-4.

<sup>11/</sup> Ameritech Comments, at 6.

<sup>12/</sup> CompTel Comments, at 7. AT&T states that "43 states have already adopted 1+ ten-digit dialing for intraLATA, home NPA toll calls." (AT&T Comments, at 6). Sprint identifies the seven states where toll calls within the home NPA are now or are scheduled to be dialed on a 7-digit basis as California, Illinois, New Hampshire, New Jersey, New York, Pennsylvania and West Virginia. (Sprint Comments, at 10, n. 10).

jurisdictional rights, recognizes the benefits, and supports establishment, of a national standard toll call identifier.<sup>13/</sup>

While some parties, noting that the Communications Act vests in state regulatory agencies the power to regulate calls within their borders, suggest that "this jurisdiction would seem to include how their citizens dial in-state calls [and that this] Commission should, therefore, decline to entertain complaints over dialing arrangements for intrastate calls",<sup>14/</sup> the Commission has correctly determined that under Section 201(a) of the Communications Act it may issue orders to establish "physical connections" between carriers and "facilities and regulations for operating . . . through routes", and that "[t]elephone numbers are an indispensable part of the 'facilities and regulations' for operating these 'through routes' of physical interconnection between carriers and are therefore subject to our plenary jurisdiction under the Act."<sup>15/</sup>

The record on this issue is not ambiguous. Serious problems will result unless a standard national toll dialing pattern is adopted (no one forcefully argues they will not), and the only way to prevent the serious problems from occurring is if the Commission exercises its plenary jurisdiction quickly to

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<sup>13/</sup> NARUC has adopted a resolution directed to all of its members encouraging all states to adopt "Prefix '1' + Area Code + Central Office Code as the minimum standard dialing plan" for toll calls within their state jurisdictions. NARUC Comments, at 6.

<sup>14/</sup> US WEST Comments, at 12.

<sup>15/</sup> NPRM, at para. 8. (Footnote omitted).

mandate use of the digit "1" as the toll indicator before the current Bellcore proposal takes effect.

**II. THE COMMISSION SHOULD PREEMPT INCONSISTENT STATE DIALING PLANS.**

The FCC has preemptive authority under the Communications Act and interpretive case law to prescribe a uniform national dialing plan. As noted above, in the NPRM, the Commission correctly determined that under Section 201(a) of the Communications Act it may issue orders to establish, "physical connection," between carriers and, "facilities and regulations and operating... through routes," and that, "[t]elephone numbers are an indispensable part of the 'facilities and regulations' for operating these 'through routes' of physical interconnection between carriers and are therefore subject to the Commission's plenary jurisdiction under the Act."<sup>16/</sup> The Commission also has determined that at least insofar as interstate service is concerned a competitive industry structure is the best means for serving the goals specified in Section 1 of the Communications Act.<sup>17/</sup>

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<sup>16/</sup> Id.

<sup>17/</sup> See, e.g., Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Services (WATS), CC Dkt. No. 19528, First Report and Order 57 FCC 2d 593 (1975); Memorandum Opinion and Order, 57 FCC 2d 216 (1976); Memorandum and Opinion and Order, 58 FCC 2d 716 (1976); Second Report and Order, 58 FCC 2d 736 (1976); Memorandum Opinion and Order, FCC 76-377 (released April 28, 1976); Specialized Common Carrier, Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common  
(continued...)

The record in this proceeding establishes that Bellcore's implementation of interchangeable NPA (INPA) codes on January 1, 1995, will frustrate these Commission policies. IntraNPA, toll traffic would be routed to LECs unless customers take the very unlikely step of special dialing procedures to reach their presubscribed long distance carrier.

Additionally, the record shows that the LECs' planned implementation of INPA codes will cause customer confusion and result in customers unwittingly incurring toll charges when they place home NPA toll calls. A carrier practice which produces such customer confusion must be considered unlawful under Section 201(a) of the Act where, as in this case, another workable and consumer friendly dialing plan option is available.<sup>18/</sup>

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<sup>17/</sup> (...continued)

carrier Services in the Domestic Public Point-to-Point Microwave Radio Service, Dkt. No. 18920, Notice of Inquiry to Formulate Policy, Notice of Proposed Rulemaking, and Order (designating issues for oral argument), 26 FCC 2d 840 (1970); First Report and Order, 29 FCC 2d 870 (1971); recon. denied 31 FCC 2d 1106 (1971); aff'd sub nom. Washington Utilities & Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975); See generally, MTS and WATS Market Structure, CC Dkt No. 78-72, Notice of Inquiry and Proposed Rulemaking, 67 FCC 2d 757 (1978); Supplemental Order (Phase I), 94 FCC 2d 852 (1983); Phase I Order Modified on Reconsideration, 97 FCC 2d 682 (1983); Phase I Order Modified on Further Recon. 97 FCC 2d 834 (1984); Phase I Orders aff'd in part, remanded in part sub nom., National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984); cert. denied, 469 U.S. 1227 (1985); Report and Order (Phase III), 100 FCC 2d (1985); Phase I Order modified on second further recon. 101 FCC 2d 1222 (1985); aff'd sub nom. Amer. Tel. & Tel. Co. v. FCC, 832 F.2d 1285 (D.C. Cir. 1987).

<sup>18/</sup> The Ad Hoc Committee's Comments in this proceeding has proposed such a dialing plan. Ad Hoc Committee Comments, at 12-13.

The Commission indisputably has jurisdiction to require the LECs to implement the Ad Hoc Committee's proposed dialing plan, rather than Bellcore's INPA plan, for interstate toll calls and interstate calls within a local calling area, such as calls from Washington, D.C. to the Virginia or Maryland suburbs. To enhance interstate long distance competition and to reduce customer confusion regarding dialing patterns for interstate calls, the Commission should, as an exercise of its jurisdiction under Sections 4(i) and 201 of the Communications Act, direct the LECs to implement the Ad Hoc Committee's proposed dialing plan for interstate toll calls and interstate local calls.

The Commission, however, should go further; it should preempt the states with respect to dialing patterns generally and prescribe the Ad Hoc Committee's dialing plan as the national uniform dialing plan. The Commission may lawfully preempt state dialing plans which are inconsistent with a federal dialing plan if: (1) preemption would serve valid goals brought under FCC jurisdiction by the Communications Act; (2) preemption is necessary to avoid frustrating such goals; and (3) preemption is narrowly tailored to apply to a matter that cannot be separated into intrastate and interstate components.<sup>19/</sup>

Preemption in this case would serve valid goals within the Commission's jurisdiction. It would promote competition in the long distance market and thereby facilitate the efficient introduction of state-of-the-art telecommunications service at

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<sup>19/</sup> Id., n. 4.

reasonable rates. Additionally, reduction in consumer confusion in the purchase of telecommunications services is a valid goal under both Titles I and II of the Communications Act. Carrier practices which causes consumer confusion (such as eliminating the prefix "1" as a toll call identifier) are unreasonable under Section 201 of the Communications Act. Consumers in our mobile society move often from state to state. Moreover, unless the Commission acts now to preempt states from prescribing intrastate dialing patterns that are inconsistent with the uniform use of "1+" as the toll identifier prefix, levels of customer confusion are likely to increase over time. At least at this point 1+ dialing continues to be used in most states to signify a toll call. However, as the demand for number assignments continues to grow, particularly as new services such as PCS come on line, the opportunities for increasingly dissimilar state approaches to dialing sequences are enhanced, and disparities are likely to grow. At some point, variations among state dialing patterns could proliferate sufficiently to make adoption of a uniform dialing plan difficult. As a practical matter, such confusion can be prevented only by federal preemption of inconsistent state dialing patterns now, before the implementation of INPAs and the expected growth in demand for number assignments.

The "impossibility" or "inseparability" standard established in Louisiana Public Service Commission does not equate to a

physical impossibility standard.<sup>20/</sup> Instead, the only reasonable interpretation of Louisiana Public Service Commission is that preemption is permissible if as a practical matter inconsistent state and federal regulation cannot co-exist without frustrating achievement of goals within the Commission's jurisdiction. Those conditions exist in this case. Commission prescription of the dialing plan recommended by the Ad Hoc Committee for interstate calls, including local calls that cross state lines, could not be accommodated with state plans which require use of the digit "1" as a prefix whenever calls cross LATA boundaries, even local calls.

Dialing patterns are an integral and, indeed, essential, element of this Commission's administration of the North American Numbering Plan. The Commission already has found that assignment of NXX codes to cellular carriers is a function of the North American Numbering Plan.<sup>21/</sup> Just as NXX codes are a national resource, so also is the dialing plan. Indeed, NXX codes are part of the dialing plan. Without a consistent dialing plan, the utilization of NXX codes would be meaningless and the uniformity of the NANP would be disrupted.<sup>22/</sup> Indeed, Bellcore's INPA plan

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<sup>20/</sup> Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

<sup>21/</sup> The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier, 2 FCC Rcd 2910, 2912 (1987).

<sup>22/</sup> The Commission has found that disrupting the uniformity of the NANP could substantially offset interstate communications.



is driven to major degree by the need to accommodate changes in the way in which NXX codes are used and assigned. In light of these considerations, prompt preemption of inconsistent state dialing plans is required.

**III. CONCLUSION**

In view of the foregoing, the Ad Hoc Committee urges the Commission to adopt policies in the above-captioned proceeding which are consistent with the positions espoused in the Ad Hoc Committee's Comments and Reply Comments in this docket.


Respectfully submitted,

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June 30, 1994

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I, Jo Ann Stephens, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 30th day of June, 1994, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing **REPLY COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE** to the following:

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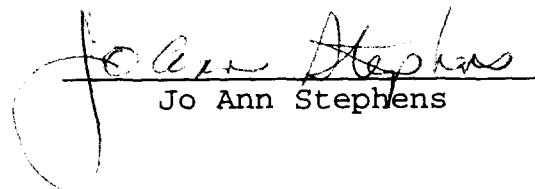
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